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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,955	03/01/2004	Liam Scanlan	2103175-991121	2154
26379	7590	08/06/2008		
DLA PIPER US LLP 2000 UNIVERSITY AVENUE E. PALO ALTO, CA 94303-2248			EXAMINER CORRIELUS, JEAN M	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/790,955	Applicant(s) SCANLAN, LIAM	
	Examiner Jean M. Corrielus	Art Unit 2162	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-12 and 16-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-12 and 16-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This office action is in response of the decision on the petition granted on June 4, 2008. The election of the restriction requirement filed on February 6, 2008 has been considered as to the merits. Claims 4-12 and 16-18 are presented for examination.

Double Patenting

2. The non statutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 4-12 and 16-18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of the U.S. Patent No. 6,745,210. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons: Claim 1 of the instant application substantially recites the limitations of claim 1 of the cited U.S. patent. The claim merely omits certain the underlined limitations and replaces the bolded limitations as shown in comparison table 1 below.

Application Claim 4	US Patent Claim 2
<p>4. A method for visually representing backup activity successes and failures for a plurality of data backup products, the method comprising:</p> <ul style="list-style-type: none"> obtaining records from one or more data backup products, the records containing data backup activity information; inserting the information in the records into a canonical database; and generating a visual display that illustrates the backup failures and successes for one or more servers and clients and targets associated with the one or more data backup products, <p>the visual display further comprising</p> <ul style="list-style-type: none"> a first object indicating a backup failure for a backup product, a second object indicating a backup success for a backup product, and a third object indicating a backup partial failure for a backup product, <p>wherein the visual display displays the backup status of the clients and servers and targets of the data backup products.</p>	<p>2. A method for visually representing backup activity successes and failures for a plurality of data backup products, the method comprising:</p> <ul style="list-style-type: none"> obtaining records from one or more data backup products, the records containing data backup activity information; inserting the information in the records into a canonical database; and generating a visual display that illustrates the backup failures and successes for one or more servers and clients and targets associated with the one or more data backup products, <p>the visual display further comprising</p> <ul style="list-style-type: none"> a first object indicating a backup failure for a backup product, a second object indicating a backup success for a backup product, and a third object indicating a backup partial failure for a backup product, <p>wherein the visual display displays the backup status of the clients and servers and targets of the data backup products;</p> <p><u>wherein the visual display further comprises</u></p> <ul style="list-style-type: none"> <u>a first color-coded object indicating a backup failure for a client or server of a backup product,</u> <u>a second color-coded object indicating a backup success for a client or a server of a backup product, and</u> <u>a third color-coded object indicating a backup partial failure for a client or a server of a backup product,</u> <p><u>wherein the visual display displays the backup status of the clients and servers of the data backup products are indicated by the color-coded objects;</u></p> <p><u>wherein generating the visual display further comprises generating a table having one or more columns and one or more rows including an element at the intersection of each column with each row,</u></p> <p><u>wherein each row represents one of a server and a client of a server, wherein each column represents a day of backup activity for all of the servers and clients and wherein each element represents the backup status for a particular client or</u></p>

	<u>server on a particular day; wherein the table further comprises a server row and one or more client rows underneath the server row wherein the one or more clients are associated with the server and one or more target rows associated with a client or server corresponding to pieces of data that have been backed up; wherein generating the visual display further comprises determining the color of the object being placed into an element of the table corresponding to the status of a target on a particular day, wherein the color determining further comprises changing the indicator for one of the client and server based on the indicator for a particular target associated with the element of the table; wherein generating the visual display further comprises adding a new target into the table wherein a new server row and a new client row are added to the table and the indicator objects are set to failure and wherein the color determining further comprises comparing the date of the new target with the existing indicators in the table in order to change the indicators for the new target.</u>
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Table 1

It would have been obvious to one of ordinary skill in the art of data processing at the time the invention was made to modify the cited steps as indicated claim 2 of the US Patent since the omission and addition of the cited limitations would have not changed the process according to which the method for visually representing backup activity successes and failures for a plurality of data backup products. Therefore, the ordinary skilled artisan would have been also motivated to modify claim 2 of the cited US patent by deleting the above underlined limitations. The cited omitting elements would not interfere with the functionality of the steps previously claimed and would perform the same function. In re Karlson, 136 USPQ 184 (CCPA 1963).

The dependent claims 5-12 of the instant application are rejected for fully incorporating the errors of their respective base claims by dependency.

As to claims 16-18, it would have been obvious to one of ordinary skill in the art of data processing at the time the invention was made to modify the cited steps as indicated claim 16 of the pending application to incorporate a virtual display backup status of the clients and server of the backup product, since the omission and addition of the cited limitations would have not changed the process according to which the data structure for visually representing backup activity successes and failures for a plurality of data backup products. Therefore, the ordinary skilled artisan would have been also motivated to modify claim 16 of the pending application by adding a hidden row element, the hidden row element having a backup product name portion containing the backup product name associated with the row, a server name portion containing the server name associated with the row and a backup client name portion containing the backup client name associated with the row. The cited substitute elements would not interfere with the functionality of the steps previously claimed and would perform the same function. In re Karlson, 136 USPQ 184 (CCPA 1963).

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 16-18 are rejected 35 U.S.C. 101 because they are directed to non-statutory subject matter, specifically, as directed to an abstract idea.

Claim 16 recites a data structure. Such data structure defines non-statutory processes because it merely manipulates an abstract idea without a claimed limitation to a practical application. The data structure recited in claim 16 is not claimed as embodied in computer-readable media is descriptive material per SE and is not statutory because they are neither

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physical nor statutory processes. Applicant should duly note that the structural and functional interrelationship with a general-purpose computer for permitting claimed functions to be realized are not provided in the claims. In contrast, such data structure as claimed should define as structural and functional interrelationships between data structures or functional parts and a computer system which permit the data functions to be realized, and is statutory. Thus, the claimed are rejected as being non-statutory. Additionally, the invention, as claimed, is directed to the manipulation of an abstract idea with no practical application in the technology arts. The claim sets forth a method. The claims are non-statutory as not being tangible embodied in the computer.

The dependent claims 17-18 suffer of similar deficiencies of the base claims, as noted above.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean M. Corrielus whose telephone number is (571) 272-4032.

The examiner can normally be reached on 10 hours shift.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Breene can be reached on (571) 272-4107. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jean M Corrielus/
Primary Examiner, Art Unit 2162

August 5, 2008